

Senate Bill 252

By: Senators Thomas of the 54th, Goggans of the 7th, Mullis of the 53rd, Unterman of the 45th and Hill of the 4th

**AS PASSED**

A BILL TO BE ENTITLED  
AN ACT

To amend Article 1 of Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to the Georgia Composite Medical Board, so as to authorize the board to establish a professional health program to provide for monitoring and rehabilitation of impaired health care professionals; to authorize the board to enter into a contract with an entity to conduct such program; to provide for definitions; to provide for transfer and confidentiality of information; to provide for immunity; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 1 of Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to the Georgia Composite Medical Board, is amended by revising subsection (g) of Code Section 43-34-2, relating to creation of the Georgia Composite Medical Board, physician assistants advisory committee, review of qualifications, and impaired physicians programs, as follows:

~~"(g) The board shall have the authority to contract with medical associations or other professionally qualified organizations to conduct impaired physicians programs.~~  
Reserved."

**SECTION 2.**

Said article is further amended by adding a new Code section to read as follows:

"43-34-5.1.

(a) As used in this Code section, the term:

(1) 'Entity' means an organization or medical professional association which conducts professional health programs.

(2) 'Health care professional' means any individual licensed, certified, or permitted by the board under this chapter.

(3) 'Impaired' means the inability of a health care professional to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(4) 'Professional health program' means a program established for the purposes of monitoring and rehabilitation of impaired health care professionals.

(b) The board shall be authorized to conduct a professional health program to provide monitoring and rehabilitation of impaired health care professionals in this state. To this end, the board shall be authorized to enter into a contract with an entity for the purpose of establishing and conducting such professional health program, including but not limited to:

(1) Monitoring and rehabilitation of impaired health care professionals;

(2) Performing duties related to paragraph (13) of subsection (a) of Code Section 43-34-8; and

(3) Performing such other related activities as determined by the board.

(c) Notwithstanding the provisions of Code Sections 43-34-7 and 43-34-8, the board shall be authorized to provide pertinent information regarding health care professionals, as determined by the board and in its sole discretion, to the entity for its purposes in conducting a professional health program pursuant to this Code section.

(d) All information, interviews, reports, statements, memoranda, or other documents furnished to the entity by the board or other source or produced by the entity and any findings, conclusions, recommendations, or reports resulting from the monitoring or rehabilitation of health care professionals pursuant to this Code section are declared to be privileged and confidential and shall not be subject to Article 4 of Chapter 18 of Title 50, relating to open records. All such records of the entity shall be confidential and shall be used by such entity and its employees and agents only in the exercise of the proper function of the entity pursuant to its contract with the board. Such information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the entity and any findings, conclusions, recommendations, or reports resulting from the monitoring or rehabilitation of health care professionals shall not be available for court subpoenas or for discovery proceedings.

(e) An impaired health care professional who participates in a professional health program conducted pursuant to this Code section shall bear all costs associated with such participation.

(f) Any entity that contracts with the board pursuant to this Code section shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed, for the performance of any functions or duties under the contract if performed in accordance with the terms of such contract and the provisions of this Code section."

**SECTION 3.**

Said article is further amended by revising paragraph (13) of subsection (a) and subparagraph (1)(K) of subsection (b) of Code Section 43-34-8, relating to authority to refuse license, certificate, or permit or issue discipline, as follows:

"(13) Become unable to practice pursuant to this chapter with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition:

(A) In enforcing this paragraph the board may, upon reasonable grounds, require a licensee, certificate holder, permit holder, or applicant to submit to a mental or physical examination by physicians designated by the board. The expense of this examination shall be borne by the licensee, certificate holder, or permit holder or applicant. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-9-21. Every person who shall accept the privilege of practicing a profession regulated under this chapter or who shall file an application for a license to practice a profession regulated under this chapter in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board, upon the grounds that the same constitutes a privileged communication. If a licensee, certificate holder, or permit holder or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee, certificate holder, permit holder, or applicant who is prohibited from practicing pursuant to this chapter under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin practice pursuant to this chapter with reasonable skill and safety to patients;

(B) For the purposes of this paragraph, the board and any entity which has entered into a contract with the board pursuant to Code Section 43-34-5.1, if specifically provided for in such contract, may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee, certificate holder, or permit holder or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-9-21. Every person who shall accept the privilege of practicing pursuant to this chapter in this state or who shall file an application to practice pursuant to this chapter in this state shall be deemed to have given his or her consent to the board's obtaining any such records and to have waived

all objections to the admissibility of such records in any hearing before the board, upon the grounds that the same constitute a privileged communication; and

(C) If any licensee, certificate holder, or permit holder or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in subparagraph (A) of this paragraph or the records relating to the mental or physical condition of such licensee, certificate holder, or permit holder or applicant obtained pursuant to subparagraph (B) of this paragraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any licensee, certificate holder, or permit holder or applicant in any other type of proceeding;"

"(K) Condition the penalty, or withhold formal disposition, which actions shall be kept confidential, unless there is a public order upon the ~~licensee or applicant~~, licensee, certificate holder, or permit holder's submission to the care, counseling, or treatment by physicians or other professional persons, which may be provided pursuant to Code Section 43-34-5.1, and the completion of such care, counseling, or treatment, as directed by the board; or"

#### SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.